



## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[WC Docket No. 12–375, FCC 22-76; FR ID 111465]

#### Rates for Interstate Inmate Calling Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks to obtain detailed comment to enable it to make further progress toward ensuring that the rates, charges, and practices for and in connection with interstate and international inmate calling services meet applicable statutory standard. In this document FCC 22-76, the Commission seeks comment on whether to adopt a form of enterprise registration for IP CTS, whether to increase inmate services providers’ TRS-related access obligations to include providing access to advanced forms of TRS in jurisdictions with an average daily population of less than 50 incarcerated persons, and whether inmate calling services providers should disclose their charges in an accessible format for disabled incarcerated people. The Commission also seeks comment on whether it should refine its rules concerning the treatment of unused funds in accounts that consumers use to pay for interstate and international inmate calling services and related ancillary services charges, on how it might improve its consumer disclosure rules, and on how the Commission should use the responses to the Third Mandatory Data Collection to establish reasonable, permanent caps on rates and ancillary service charges for interstate and international calling services for incarcerated people. The Commission seeks further comment on whether to allow inmate calling services providers to offer pilot programs that offer consumers the ability to purchase inmate calling services under alternative pricing structures. Last, the Commission also seeks comment on whether it should expand its definitions of “Jail” and “Prison” and on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

**DATES:** Comments are due on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]; and reply comments are due on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by WC Docket No. 12-375, by either of the

following methods:

- *Federal Communications Commission's website:* <https://www.fcc.gov/ecfs/filings>. Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. Currently, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the Commission's Sixth Further Notice of Proposed Rulemaking, FCC 22-76 at:

<https://docs.fcc.gov/public/attachments/FCC-22-76A1.pdf>.

**FOR FURTHER INFORMATION CONTACT:** Michael Scott, Disability Rights Office of the Consumer and Governmental Affairs Bureau, at (202) 418-1264 or via email at [michael.scott@fcc.gov](mailto:michael.scott@fcc.gov) regarding portions of the Sixth Further Notice of Proposed Rulemaking relating specifically to the provision of communications services for incarcerated people with hearing and speech disabilities and Jennifer Best Vickers, Pricing Policy Division of the Wireline Communications Bureau, at (202) 418-1526 or via email at [jennifer.vickers@fcc.gov](mailto:jennifer.vickers@fcc.gov) regarding other portions of the Sixth Further Notice of Proposed Rulemaking.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Sixth Further Notice of Proposed Rulemaking, document FCC 22-76, released September 30, 2022. This summary is based on the public redacted version of document FCC 22-76, the full text of which can be obtained from the following internet address: <https://docs.fcc.gov/public/attachments/FCC-22-76A1.pdf>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov), or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY).

This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the

Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

#### **SYNOPSIS:**

1. The ability to make telephone calls is essential to allowing incarcerated people to stay connected to their family and loved ones, clergy, counsel, and other critical support systems. While unreasonable rates, charges, and practices associated with calling services present significant barriers to all incarcerated people, the obstacles are much larger for those who are deaf, hard of hearing, deaf-blind, or who have a speech disability. The Commission refers to this class of people generally as incarcerated people with communication disabilities. Because functionally equivalent means of communication with the outside world are often unavailable to incarcerated people with communication disabilities, they are effectively trapped in a prison within a prison. Consistent with the Commission's statutory obligations, in

document FCC 22-76, the Commission takes strides to improve access to communications services for incarcerated people with communication disabilities.

2. The Commission has an obligation under section 225 of the Communications Act of 1934, as amended (the Act), to ensure those with communication disabilities receive service that is functionally equivalent to that received by those without such disabilities. This obligation supplements and focuses the Commission's obligation under section 201(b) of the Act to ensure all people, including incarcerated people, have access to calling services under just and reasonable rates, terms, and practices. In May 2021, the Commission reaffirmed its commitment to ensure that incarcerated people with disabilities have access to functionally equivalent telecommunications services. That Order also lowered, on an interim basis, the Commission's caps on the amounts inmate calling services (ICS) providers serving prisons or jails with 1,000 or more incarcerated people may charge for interstate calls and capped, for the first time, the providers' charges for international calls. To enable the Commission to set permanent, cost-based interstate and international rate caps for facilities of all sizes and to, if appropriate, adjust its caps on ancillary services fees, that Order required all calling services providers to submit detailed cost data based on prescribed allocation methodologies. The Commission also issued an accompanying document proposing to expand access to all eligible relay services for incarcerated people with communication disabilities and seeking comment on a number of other issues, including the methodology to be used in setting permanent interstate and international rate caps, the need for periodic data collections, and additional reforms to the ancillary service charge rules.

3. The Commission seeks comment on various matters to build on the actions it takes today and to obtain additional stakeholder input required to implement further reforms for incarcerated people with communication disabilities. The Commission seeks additional comment on whether to allow enterprise registration for Internet Protocol Captioned Telephone Service (IP CTS) in carceral settings and how to address the special circumstances faced by some inmate calling services providers in jurisdictions with average daily populations of fewer than 50 incarcerated persons. IP CTS is a captioned telephone service in which captions are delivered via the Internet to an Internet Protocol-enabled device.

4. The Commission also seeks additional evidence and comment from stakeholders to enable further reforms concerning providers' rates, charges, and practices in connection with interstate

and international inmate calling services. First, the Commission seeks comment on refining the rules adopted today concerning the treatment of balances in inactive accounts. Second, it seeks comment on expanding the breadth and scope of the Commission's existing consumer disclosure requirements. Third, it asks the stakeholders to update the record on certain issues in light of the providers' data collection responses. Specifically, the Commission seeks comment on how the Commission should use the data to establish just and reasonable permanent caps on interstate and international rates and associated ancillary service charges consistent with the statute. The Commission invites further comment on allowing inmate calling services providers to offer pilot programs allowing consumers to purchase calling services under alternative pricing structures. Finally, the Commission seeks comment on whether it should expand the definitions of "Jail" and "Prison" to ensure that they capture the full universe of confinement facilities with residents who may access interstate and international communications services, and on how its proposals may promote or inhibit digital equity and inclusion.

5. The Commission expects these actions will bring much-needed relief to incarcerated people with communication disabilities by easing the obstacles these individuals face in communicating with loved ones. At the same time, the Commission expects its other reforms aimed at reducing certain charges and curtailing abusive practices to benefit all incarcerated people by easing the financial burdens that such charges and practices place on the incarcerated and those they call.

## **Background**

6. The impact that unjust and unreasonable rates, fees, and practices have on incarcerated people, as well as the Commission's efforts to ameliorate that impact, are well-documented, and need not be repeated here.

### *7. Communication Disabilities and Calling Services for Incarcerated People.*

Telecommunications Relay Services (TRS) are telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind or who has a speech disability to engage in communication by wire or radio in a manner that is functionally equivalent to the ability of a hearing person who does not have a speech disability to communicate using voice communication services. In 2013, the Commission clarified that section 225 of the Act and the Commission's implementing regulations prohibit inmate calling services providers from assessing an additional charge for a TRS call,

in excess of the charge for an equivalent voice inmate calling services call. In 2015, the Commission went further, amending its rules to prohibit inmate calling services providers from levying or collecting any charge at all for a TRS call placed by an incarcerated individual using a text telephone (TTY) device. The Commission reasoned that, by exempting TRS calls from the fair compensation mandate of section 276 of the Act, Congress indicated an intent that such calls be provided for no charge.

8. In 2015, the Commission affirmed that the general obligation of common carriers to ensure the availability of “mandatory” forms of TRS—TTY-based TRS and speech-to-speech relay service (STS)—applies to inmate calling services providers. TTY-based TRS allows an individual with a communication disability to communicate by telephone with another party, such as a hearing individual, by using a TTY device to send text to a communications assistant (CA) over a circuit-switched telephone network. To connect a hearing individual as the other party to the call, the CA establishes a separate voice service link with the hearing party and converts the TTY user’s text to speech. The CA listens to the hearing party’s voice response and converts that speech to text for the TTY user. A TTY is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system. STS allows individuals with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by that person. This obligation to ensure the availability of TRS also applies to providers of interconnected Voice over Internet Protocol (VoIP) services. However, the Commission did not require those providers to provide access to other relay services—Video Relay Service (VRS), Captioned Telephone Service (CTS), IP CTS, and Internet Protocol Relay Service (IP Relay). VRS is a form of TRS that allows people with hearing and speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the CA to view and interpret the party’s signed conversation and relay the conversation back and forth with a voice caller. CTS is used by persons who can speak but who have difficulty hearing over the telephone. Placing a telephone call from a screen-equipped telephone, the user can simultaneously listen to the other party to the call and read captions of what the other party is saying. IP Relay is a form of TRS that permits an individual with a hearing or a speech disability to communicate in text using an Internet Protocol-enabled device via the Internet. For consumers who are deaf-blind, IP

Relay service is often the sole or primary means of communicating via telephone. The Commission reasoned that, because it had not required that all common carriers provide access to these services, it was not able to require inmate calling services providers to do so. In 2015, the Commission sought additional comment on the implications of video calling and video visitation services for incarcerated individuals who are deaf or hard of hearing. In 2020, the Commission sought comment on whether additional forms of TRS should be made available to incarcerated individuals, and what the Commission could do to facilitate such access.

9. In 2021, after reviewing the record of this proceeding, and noting that there is far more demand for “non-mandatory” relay services, such as VRS and IP CTS, than for “mandatory” TTY-based relay service, the Commission found that access to commonly used, widely available relay services, such as VRS and IP CTS, is equally or more important for incarcerated people with communication disabilities than it is for the general population. Therefore, to ensure that such individuals have functionally equivalent access to communications, the Commission proposed to amend its rules to require that inmate calling services providers give access wherever feasible to all relay services eligible for TRS Fund support. The Commission also sought comment on whether changes to its TRS rules would be necessary in conjunction with expanded TRS access for incarcerated people, and the Commission proposed to amend section 64.6040 of its rules to clarify that the prohibition on inmate calling services providers charging for TRS calls applies to all forms of TRS, and that such charges must not be assessed on any party to a TRS call for either the relay service itself or the device used. In addition, the Commission also sought comment on whether to require inmate calling services providers to give access to direct, or point-to-point, video communication for eligible incarcerated individuals wherever they provide access to VRS, and whether to limit the charges that may be assessed for such point-to-point video service. Point-to-point video service enables two or more ASL users to place and receive video calls without the assistance of a CA. *See* 47 CFR 64.601(a)(32). In a 2021 document, the Commission primarily used the term direct video to refer to such calls. While the Commission considers direct and point-to-point to be synonymous in this context, the Commission uses the term point-to-point in this Order and its final rules, to avoid any risk that some parties might assume this service could only be provided by a Qualified Direct Video Entity pursuant to section 64.613(c) of its rules. Finally, the Commission sought comment on whether to

extend its reporting requirements from just TTY service to all other forms of TRS.

### **Additional Calling Services Reforms**

10. *Rate and Ancillary Services Fee Caps.* Beyond the disability context, in the 2021 ICS document, the Commission took a number of actions that warrant specific attention here. Structurally, that Order applied separate rate caps to prisons, jails having average daily populations of 1,000 or more incarcerated people, and jails with lower average daily populations. Additionally, the Commission established interim interstate and international rate caps for prisons and for jails having average daily populations of 1,000 or more. Those rate caps are interim because flaws in the data submitted in response to the Second Mandatory Data Collection prevented the Commission from setting permanent caps for interstate and international inmate calling services and associated ancillary services that accurately reflect the costs of providing those services.

11. To account for this problem, the Commission directed the Wireline Competition Bureau (WCB) and Office of Economics and Analytics (OEA) to develop an additional data collection—the Third Mandatory Data Collection—to enable the Commission to set permanent rate caps for interstate and international inmate calling services that accurately reflect the providers’ costs of providing those services, and to inform the evaluation and potential revision of the Commission’s caps on ancillary service charges. After seeking public comment, WCB and OEA issued an Order requiring each inmate calling services provider to submit, among other information, detailed information regarding its inmate calling services operations, costs, revenues, site commission payments, security services, and ancillary services costs and practices. The providers’ data collection responses were due June 30, 2022. The Commission has received responses from 14 providers, and WCB and OEA are analyzing those responses.

12. Looking forward, in 2021 the Commission sought comment on the methodology the Commission should use to adopt permanent per-minute rate caps for interstate and international inmate calling services, including seeking comment on certain aspects of reported costs, such as on site commission costs and other site commission reforms for facilities of all sizes, and on the costs of providing calling services to jails with average daily populations of fewer than 1,000 incarcerated people.

13. *Ancillary Services Fee Caps and Practices.* Building on the ancillary services charge



rules that the Commission had adopted in 2015, in 2021 the Commission capped, on an interim basis, the third-party fees inmate calling services providers may pass through to consumers for single-call services and third-party financial transactions at \$6.95 per transaction. The rules adopted in 2015 limited permissible ancillary services charges to only five types and capped the charges for each: (1) Fees for Single Call and Related Services—billing arrangements whereby an incarcerated person’s collect calls are billed through a third party on a per-call basis, where the called party does not have an account with the inmate calling services provider or does not want to establish an account; (2) Automated Payment Fees—credit card payment, debit card payment, and bill processing fees, including fees for payments made by interactive voice response, web, or kiosk; (3) Third-Party Financial Transaction Fees—the exact fees, with no markup, that providers of calling services used by incarcerated people are charged by third parties to transfer money or process financial transactions to facilitate a consumer’s ability to make account payments via a third party; (4) Live Agent Fees—fees associated with the optional use of a live operator to complete inmate calling services transactions; and (5) Paper Bill/Statement Fees—fees associated with providing customers of inmate calling services an optional paper billing statement. The Commission also sought comment on the relationship between these two ancillary services, and on reducing the caps for single-call services fees and third-party financial transactions fees for automated transactions to \$3.00 and the cap for live agent fees to \$5.95.

14. *Consumer Disclosures.* In 2021, the Commission adopted three new consumer disclosure requirements to promote transparency regarding the total rates charged consumers of inmate calling services. First, the Commission required providers to clearly, accurately, and conspicuously disclose any separate charge (i.e., any rate component) for terminating international calls to each country where they terminate international calls on their websites or in another reasonable manner readily available to consumers. Second, the Commission required providers to clearly label any site commission fees they charged consumers as separate line items on consumer bills and set standards for determining when the fees would be considered clearly labeled. Finally, the Commission required providers to clearly label all charges for international calls, as separate line items on consumer bills.

15. *Other Relevant Topics.* In the 2021 ICS document, the Commission invited comment regarding several additional issues on which it takes action today. The Commission expressed concern

about providers' practices regarding unused funds in inactive accounts and invited comment on whether the Commission should require refunds after a certain period of inactivity. The Commission proposed to amend the definitions of "Jail" and "Prison" in its rules by, among other actions, explicitly including facilities of the U.S. Immigration and Customs Enforcement (ICE) and the Federal Bureau of Prisons (BOP), whether operated by the law enforcement agency or pursuant to a contract, in its definition of "Jail," and by adding the terms "juvenile detention facilities" and "secure mental health facilities" to that definition. The Commission also highlighted record evidence that some providers of inmate calling services may have been imposing duplicate transaction costs on the same payments, such as charging both an automated payment fee when a consumer makes an automated payment to fund its account, as well as charging a third-party financial transaction fee to cover credit/debit card processing costs on the same transaction. The Commission sought comment on whether providers engaged in such "double dipping," as had been alleged in the record, and whether the Commission's rules clearly prohibit assessing multiple ancillary service charges per transaction or should be amended to implement such a prohibition. The Commission similarly sought comment on whether the credit card processing fees encompassed in the automated payment fee are the same credit card processing fees referred to in the third-party financial transaction fee.

16. Finally, the Commission sought comment in the 2021 ICS document on whether alternative pricing structures (i.e., those that are independent of per-minute usage pricing) would benefit incarcerated people and their families. The Commission asked commenters to address the relative merits of different pricing structures, such as one under which an incarcerated person would have a specified—or unlimited—number of monthly minutes of use for a predetermined monthly charge. The Commission also asked whether it should allow providers to offer different optional pricing structures as long as one of their options would ensure that all consumers of inmate calling services have the ability to choose a plan subject to the Commission's prescribed rate caps. Relatedly, in response to a proposal from Securus, the Commission sought comment on whether the Commission should adopt a process for waiving the per-minute rate requirement to allow for the development of alternative pricing structures.

#### **Disability Access Requirements for Calling Services Providers**

17. *Enterprise Registration for IP CTS.* The Commission seeks comment on whether to

adopt a form of enterprise registration for IP CTS, limited to the correctional context, as advocated by some commenters to simplify the commencement of service to eligible incarcerated users. Do the modifications made in the accompanying Order to the Commission's registration requirements sufficiently address any registration-related barriers to the use of IP CTS in the incarceration context? Are there significant difficulties with individual registration that an enterprise registration option could overcome? If needed, how could an enterprise registration option be crafted to protect against waste, fraud, and abuse? What are the costs and benefits of allowing enterprise registration for IP CTS in the incarceration context?

18. *Expanding the Scope of Inmate Calling Services Providers' TRS-Related Access Obligations.* The Commission proposes to extend inmate calling services providers' TRS-related access obligations to require that access to advanced forms of TRS—VRS, IP Relay, and IP CTS as well as ASL point-to-point video calling, where broadband is available, and CTS where broadband is not available—be provided in jurisdictions with an average daily population of less than 50 incarcerated persons. The Commission seeks comment on this proposal. The Commission explains in the Order, to ensure that TRS and ASL point-to-point video are available to incarcerated persons to the fullest extent possible, the Commission believe the TRS-related access requirements of inmate calling services providers should be at least coextensive with those of correctional authorities—which are not subject to any population size limitation. As noted above, to justify less than full compliance with the Department of Justice's regulations implementing Title II of the ADA, a correctional authority has the burden of proving that compliance with this subpart would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

19. In the Order, the Commission set an average daily population of 50 as an initial threshold for the obligation to provide access to additional forms of TRS and ASL point-to-point video calling. Have video visitation systems continued to proliferate, or have other factors changed, such that broadband connections and video devices are now routinely provided to a broader range of city or county facilities?

20. What additional factors may determine the feasibility of providing access to Internet-based forms of TRS? What specific additional costs, for devices or other resources, are incurred by correctional authorities in jurisdictions of this size in making Internet-based TRS available? The

Commission seeks additional information, for example, on the cost of tablets and other user devices suitable for allowing incarcerated individuals to access Internet-based forms of TRS. What is the range of monthly inmate calling services revenue typically generated by city or county jails housing a daily population of fewer than 50 incarcerated people?

21. Is an average daily population of 50 the appropriate threshold for requiring access to all forms of TRS and point-to-point video service, or is a different threshold warranted? If the Commission adopts a lower threshold, how long a period should the Commission allow for providers to comply? Should the Commission require that an inmate calling services provider serving a smaller jurisdiction ensure that, to the maximum extent possible, individuals with disabilities have access to appropriate forms of TRS?

22. *Disclosure of Charges in Accessible Formats.* The Commission believes that providers of inmate calling services are subject to the same obligations as providers of telecommunications services and advanced communications services to provide information and documentation in a manner that is accessible to individuals with disabilities. To help ensure individuals with disabilities are fully informed about the costs of inmate calling services, the Commission proposes that any charges for inmate calling services, whether for voice, TRS, TTY-to-TTY, or point-to-point video, be disclosed to current and potential consumers of inmate calling services with disabilities in accessible formats. Accessible formats include, but are not limited to, large print, Braille, videos in American Sign Language and that are captioned and video described, e-mails, and printed materials. The Commission seeks comment on this proposal and belief.

### **Refining the Rules for the Treatment of Balances in Inactive Accounts**

23. The Commission seeks comment on whether it should refine the rules it adopt today concerning the treatment of unused funds in accounts that consumers use to pay for interstate and international inmate calling services and related ancillary services charges, including on whether the Commission should take any further steps to protect consumers from unjust and unreasonable practices regarding those funds. In the Order, the Commission exercises its authority under section 201(b) of the Act and prohibits providers of inmate calling services from seizing or otherwise disposing of unused funds in any account used to pay for interstate or international inmate calling services—except through a

full refund to the account holder—until the account has been inactive for at least 180 consecutive days. At that point, the provider must make reasonable efforts to refund the balance in the account to the account holder and, if those efforts fail, must treat any remaining funds in accordance with applicable state law requirements. Should the Commission refine these rules to increase consumer protection? Why or why not? Should the Commission create exceptions to these rules? If so, what exceptions should the Commission allow? Are there additional requirements the Commission should adopt concerning the disposition of balances in inactive accounts? If so, what additional requirements do commenters recommend and why? Are there situations where refunds are impractical, impossible, or otherwise unduly burdensome, and, if so, what rules should apply in those situations?

24. *Inactive Period.* In the Order, the Commission adopts a rule requiring 180 days to pass before a provider may determine that an account has become inactive. Is this an appropriate time frame? Why or why not? The Commission also requires that the 180-day inactivity period be continuous, with any of the following actions by a consumer or an incarcerated person being sufficient to demonstrate activity: (i) depositing, crediting, or otherwise adding funds to an account; (ii) withdrawing, spending, debiting, transferring, or otherwise removing funds from an account; or (iii) expressing an interest in retaining, receiving, or transferring the funds in an account, or otherwise attempting to exert or exerting ownership or control over the account or the funds held within the account. The Commission seeks comment on what other actions should constitute expressing an interest in the deposited funds. Similarly, how would an account holder or incarcerated person exert control over the account? Are there other events that the Commission has not already identified that should demonstrate activity and cause the 180-day clock to restart? If so, what are they?

25. *Timing of Refunds.* The Commission's rules require that a provider must make reasonable efforts to refund the balance in the account to the account holder. Should the Commission require providers to issue refunds within a specified period of time after an account becomes inactive? Should the Commission consider a different period of time after some other event, such as release from incarceration? If so, what period would give providers sufficient time to process the refunds while ensuring that consumers receive their money in a timely manner? If the account holder requests a refund before the account becomes inactive, what is a reasonable time frame in which to issue such refund? Do

providers need time to process a refund request after they receive the request? If so, what is that time frame? Do providers have the ability to issue a refund immediately upon request in some circumstances? If so, what would those circumstances be? Are there situations that should lead providers to immediately refund remaining amounts to account holders, even if the account has not been inactive for 180 days? If so, what are they? In particular, should the Commission require automatic refunds when the incarcerated person is released or transferred to a facility served by another provider? If so, should the situation vary if the account is held by a consumer other than the incarcerated person and can still be used by another incarcerated person? If not, what steps, if any, should the Commission take to ensure that the account holder has the opportunity to make an informed choice regarding whether to receive a refund?

26. Are there circumstances in which Commission intervention is unnecessary or an automatic refund would be impracticable or inappropriate? For example, Securus argues that the process for deactivating, and making refunds from, debit accounts when an incarcerated person is released or transferred is largely controlled by the facility and that the Commission should seek more information about such refunds. How, if at all, should the Commission refine its refund rules to recognize a facility's role in the refund process? Similarly, are there situations where a provider may not be aware that an incarcerated person has been released or transferred? If so, how can the Commission ensure that account holders have an opportunity to request refunds in those situations, or in other situations where an automatic refund is not feasible or sensible? Should the account holder be required to request a refund in writing, either by mail or email? Or would a telephonic request or some other type of request be preferable? What information would a provider need in order to verify the legitimacy of a refund request?

27. *Release and Transfer Processes.* The Commission seeks comment on the release and transfer processes to better understand the need for rules addressing those areas. Do providers receive notice when an incarcerated person is released or transferred and, if so, does the notice include the incarcerated person's future contact information? If not, what steps would be needed to ensure that providers receive all needed information about a release or transfer on a timely basis in order to efficiently refund money?

28. *Contact Information.* The Commission next invites comment on whether providers

routinely receive the type of contact information they would need to notify account holders about inactive accounts and to refund unused balances to account holders. Should the Commission require providers to collect such information? What information is necessary to ensure that a notification actually reaches an account holder? Are the account holder's email address, physical mail address, or phone number each sufficient? Does the necessary information vary depending on whether the account holder is an incarcerated person who at some point will be released from incarceration, as opposed to a person who maintains an account for the incarcerated person's use? If so, how does the necessary information differ in those circumstances, and what information would be necessary in the different circumstances?

29. *Notice to Account Holders.* The Commission seeks comment on the need for rules addressing the manner in which providers notify consumers regarding matters affecting their accounts, as well as the content of any such notices. Should the Commission require providers to notify account holders regarding their inactive account and refund policies, and the status of their accounts, including when the accounts have been deemed inactive? If so, when and how should those notices be provided, and what information beyond the account balance and the account holder's right to a refund should the Commission require to be disclosed? What sort of notice, if any, should the Commission require providers to give account holders in situations where refunds are not automatic or where attempts to provide a refund have been ineffective? Should these notices include an explanation of any state unclaimed property laws, or other state laws, that may apply to the funds in their accounts? Should the Commission require providers to notify the incarcerated person in addition to the account holder? Should the Commission require providers to send additional notices to account holders who do not respond to the initial notices? Should the Commission specify the timing, content, and mode of dissemination of any additional notices? How should the subsequent notices inform the account holder that if they do not respond, their account may be subject to state unclaimed property law, or such other law affecting the account holder's rights to the balance?

30. *Refund Mechanisms.* The Commission seeks comment on the different methods providers can use to refund unused funds and on the relative benefits and burdens of each method. For instance, are providers able to refund payments made by credit card or from a bank account directly to the card or account? What other refund methods are available to the providers? When the account holder is

an incarcerated person who has been released, how should the provider send a refund? Should it send a prepaid debit card or check to the person's forwarding address? What requirements should the Commission adopt to ensure providers quickly send refunds to recently released account holders? When the account holder is not the incarcerated person, would mailing a prepaid debit card or check to the account holder's billing address suffice? Why or why not? Which refund mechanisms are the most effective in returning funds to account holders while also minimizing the burdens on providers?

31. *Controlling Judicial or Administrative Mandate.* The Commission's rule regarding the disposition of funds in inactive accounts does not apply where a provider is acting in accordance with a controlling judicial or administrative mandate. The Commission proposes to retain this exception. The Commission also proposes to continue to treat as a controlling judicial mandate any court order requiring the incarcerated person to pay restitution, any fine imposed as part of a criminal sentence, and any fee imposed in connection with a criminal conviction to the extent these payments are made from the same account used to pay for calling services. The Commission invites comment on these proposals. Do they capture the full universe of judicial actions that a court may impose on an incarcerated person? If not, what language should the Commission incorporate into its rules to capture that universe?

32. The Commission also invites comment on whether it should consider a controlling judicial or administrative mandate to include a court or administrative agency order allowing or requiring the provider to act in a manner that would otherwise violate the Commission's rules regarding the disposition of funds in inactive accounts. The Commission's rule does not apply to the extent a court or administrative agency determines that a contract the provider and the account holder entered into prior to the release of today's Order allows or requires a different outcome. Is this the correct approach? Or should the Commission instead preclude enforcement of any such contract as contrary to section 201(b) of the Act's prohibition against unjust and unreasonable practices in connection with the provision of inmate calling services? Conversely, should the Commission allow account holders to knowingly and voluntarily waive any protections the Commission's rules provide regarding the disposition of funds in inactive accounts? If so, what notice and record keeping requirements, if any, should the Commission adopt to ensure that it will be able to determine whether account holders are fully informed of, and voluntarily waive, their rights under the Commission's rules?



33. *Ultimate Disposition of Unclaimed Funds.* The Commission invites comment on the ultimate disposition of unclaimed funds in a debit calling or prepaid calling account in circumstances where a provider's refund efforts fail and state law does not affirmatively require any particular disposition. What legal authority does the Commission have to act in this regard? Should the Commission adopt rules addressing that situation and, if so, what should those rules require? Are there any elements of state law, including state unclaimed property law, or provisions of the Uniform Unclaimed Property Act that the Commission should incorporate into the Commission's rules? Are there any state laws that provide inmate calling services-specific exceptions to otherwise applicable state unclaimed property? If so, what states have such laws and what do those laws say? Are there other types of consumer protection laws regarding the distribution or retention of balances in inactive accounts that the Commission should consider? If so, commenters should cite these other types of laws and explain their potential applicability in the inmate calling services context.

#### **Reforming the Consumer Disclosure Requirements**

34. The Commission seeks comment on how it might improve its consumer disclosure rules, including extending the scope of those rules to reach more inmate calling services consumers. Specifically, the Commission proposes to build on prior reforms by requiring inmate calling services providers to make the same required disclosures of information available to all consumers, regardless of whether they receive an actual bill from a provider. The Commission seeks comment on a number of questions regarding how providers presently disseminate information regarding inmate calling services accounts to consumers and on whether it should make additional changes to its consumer disclosure rules. The reforms the Commission contemplates will help ensure that incarcerated people and those they call will receive clear and transparent information about providers' charges and fees that inmate calling service consumers need to make informed choices regarding their calling services options.

35. *Background.* Transparency regarding the charges and fees for inmate calling services and associated ancillary services is critical because it ensures that incarcerated persons and their families understand the prices they are, or will be, charged for the services they use, enabling them to make informed decisions when purchasing those services. The Commission's inmate calling services rules require a variety of consumer disclosures designed to improve transparency. The Commission first

adopted inmate calling services consumer disclosure rules in 1998, requiring providers to make certain oral disclosures prior to the completion of interstate inmate calling services calls. The Commission also required that, prior to connecting a call, providers of inmate operator services are required to disclose orally the total cost of the call, including any surcharges or premise-imposed fees that may apply to the call, as well as methods by which to make complaints concerning the charges or collection practices upon request. Since that time, the Commission has expanded its inmate calling services rules, including the scope of the required consumer disclosures. In 2015, the Commission required calling services providers to clearly, accurately, and conspicuously disclose their rates and ancillary service charges to consumers on their websites or in another reasonable manner readily available to consumers.

36. As described above, in 2021, the Commission imposed two additional consumer disclosure requirements pertaining to consumer bills: (i) requiring providers to clearly label any site commission fees they charged consumers as separate line items on consumer bills and set standards for determining when the fees would be considered clearly labeled, and (ii) requiring providers to clearly label all charges for international calls, as separate line items on consumer bills. The Commission found these two requirements—the consumer billing rules—necessary to provide consumers with the ability to evaluate their bills and monitor whether they are receiving the protections of the Commission rate caps to which they are entitled. Since the Commission adopted these additional requirements, it has learned that consumers of inmate calling services often do not receive “bills” from their providers given the nature of their calling arrangements. As one party points out, an incarcerated individual using a debit or commissary account to pay for inmate calling services does not receive a “bill” from an inmate calling services provider. Indeed, many such consumers may not receive a statement of any kind after having paid for their calls. As a result, the information the Commission deems important regarding separate site commission rate components and international call charges may not be received by many calling service consumers.

37. *Disclosures for Consumers Who Do Not Receive Bills.* The Commission proposes to expand its consumer disclosure rules to cover consumers who do not receive bills from their inmate calling services providers. The Commission invites comment on this proposal and ask for detailed comment on how providers might implement it. The Commission also seeks comment on the timing and

frequency of disclosures that are not included directly on consumers' bills. How should consumers be made aware of the availability of the information if it is not automatically provided? Should the information be disclosed to consumers automatically and on an ongoing basis, for example on any online account statement available to that consumer? Alternatively, would including the information on the providers' websites for each facility suffice to inform interested consumers? Or should such information be provided only upon request? If so, upon receiving a consumer request, how quickly should a provider be required to supply the consumer with the requested information? Would three to five business days be sufficient or do consumers need more timely receipt of the disclosures in order to manage their accounts effectively? Are inmate calling services providers able to respond to requests for charges for site commissions and international calls within three to five business days? If not, why not? Do consumers who do not receive bills currently receive disclosures regarding providers' charges for site commissions and international calls in some other way? When, if at all, do providers disseminate such information outside the billing context and how frequently is such information updated? Is it available today only upon request?

38. *Who Should Receive Disclosures?* The Commission seeks comment on whether account holders should receive disclosures from inmate calling services providers. The Commission's rules define a "consumer" as the party that pays for the inmate calling services. Should the Commission extend its consumer disclosure rules to include incarcerated persons who use inmate calling services accounts that others fund on the incarcerated persons' behalf? Should both the account holder and the incarcerated person have access to the bill or be able to obtain account-related information from the provider when the incarcerated person is not the account holder? Who should be permitted to request the disclosures in such circumstances, the account holder, the incarcerated person, or both? The Commission seeks comment on whether anyone other than consumers and incarcerated persons should have access to the required disclosures. Are there other parties who should have access to any required disclosures? The Commission proposes to require providers to make information about their rates, terms, and conditions of service, including information about site commissions and international rate components, available generally to the public through either the provider's website or other publicly available source. Making this information publicly available provides maximum transparency and helps ensure that prospective

consumers and other interested parties have visibility into the inmate calling service rates and charges at each facility. Do commenters agree? Why or why not?

39. *Statements of Account.* The Commission seeks detailed information about how consumers who do not receive traditional bills access information regarding their accounts. Do all such consumers receive a “statement of account” or other account summary setting forth, among other information, the account balance and the charges they have incurred? If so, how are statements of account or similar documents provided to consumers? Are they provided in hard copy, electronically, or both? Are they available only upon request? How often are such statements or disclosures generated and updated? What type of hardware or software is required to produce these statements? Are they only available online such that consumers not having Internet access are unable to retrieve them? Who has access to them, the incarcerated person, the consumer, or both? The Commission proposes to require that consumers of inmate calling services and/or incarcerated individuals must have available to them statements of account or similar disclosures if they do not receive bills. To the extent providers do not presently provide statements of account or other account summaries, how costly would it be to make them available? Would the cost be outweighed by the public interest benefits of such statements?

40. To the extent that consumers receive statements of account or other account summaries, the Commission seeks comment on what information, including inmate calling services-related expenditures, is disclosed in them. Is the information provided in an itemized list or only as a total amount charged? If the information is currently provided only on an aggregate basis, how burdensome would it be to provide an itemized statement? How burdensome would it be to add information regarding providers’ charges for site commissions and international calls to statements of account or other account summaries?

41. What are the advantages and disadvantages of using statements of account or other account summaries to provide information to consumers rather than statements with itemized disclosures? What challenges do consumers currently face in accessing their account information, including specifically the information required by the Commission’s consumer disclosure rules? Are there other challenges the Commission should consider in deciding how best to increase transparency in providers’ charges and fees? How else can the Commission improve consumers’ access to relevant information

through changes to the Commission's consumer disclosure rules?

42. *Reasonableness.* The Commission seeks comment on what factors it should consider in assessing the reasonableness of different disclosure mechanisms. Are the Commission's current rules effective in providing information regarding rates, charges, and fees to people who are deaf, hard of hearing, deaf-blind, or have a speech disability? If not, how should the Commission revise those rules to make sure that its disclosure requirements are effective for all consumers? The Commission asks commenters to include details as to what form disclosures should take, how often they should be generated, how they could be accessed, and any other details needed to better inform its understanding. The Commission proposes that all disclosures, including those regarding reporting requirements and charges, be made in an accessible format for incarcerated persons with disabilities and invite comment on what steps it should take to implement this proposal. The Commission also asks for detailed proposals on how it can address any deficiencies in the current disclosure mechanisms to ensure that all consumers receive the clear, accurate, and timely information they need to make calling decisions and manage their accounts.

43. *Methods of Dissemination.* The Commission seeks comment on the best methods for ensuring that required disclosures reach consumers who do not receive bills. What are the differences in cost between providing disclosures on bills versus other methods? What other methods are available to providers and consumers? Do providers presently use paper statements, kiosks, or other means? What other methods should the Commission consider and why? Which methods are most effective in providing consumers with clear, accurate, and timely information regarding their accounts?

44. If providers do not distribute paper bills, do they disclose account-related information through other means? If so, what means do they use? Should providers be permitted to make required disclosures using only electronic means, such as websites or email, rather than on printed documents? If so, what specific alternative methods do commenters suggest the Commission allow? Should the Commission's rules specify how consumers may request copies of their bills, statements of account, or similar disclosures; and if so, how should such a request be made? Commenters are encouraged to explain how a request system would work and to describe any alternative suggestions in detail.

45. The Commission seeks comment on how consumers who lack access to the Internet can

receive information about the charges to their accounts and their account balances if it is not provided on paper bills. Do consumers have reasonable access to information made available over the Internet or via electronic means? What alternatives are used? How do consumers inform the provider that they do not have consistent or reliable Internet access and, thus, need an alternative method to access their account information and any relevant disclosures? If the only alternative method available is a paper bill or statement, should the Commission require that the provider deliver it to the consumer without charge? Consumers should be entitled to receive their bills and account statements in some accessible format free of charge. What specific changes should the Commission make to its rule permitting providers to charge consumers \$2.00 per use when they provide optional paper billing statements?

46. *Other Rule Changes.* The Commission seeks comment on other ways its consumer disclosure rules could be amended to more effectively and efficiently provide consumers information that would help them understand the charges for inmate calling services and associated ancillary services. What, if any, other changes should the Commission make to its rules, beyond those the Commission already describes in document 22-76? Should other line-item disclosures be required on bills or other account statements? If so, what should those items be? Should the Commission adopt new billing requirements? Should the Commission require that inmate calling services providers issue bills on a periodic basis to all consumers, such as every month? Would it be helpful to add definitions for “bill,” “statement of account,” or any other terms in the Commission’s rules? If so, what definitions do commenters propose?

47. The Commission’s rules require inmate calling services providers to break out in separate line items any site commission fees and international call charges. Are there other rates or fees that the Commission should require providers to disclose as separate line items? Is there other information that the Commission should require providers to disclose? If so, commenters should make specific suggestions. The Commission invites commenters to suggest other proposed actions, alternatives, and rule modifications that it should consider, and to describe issues arising from the foregoing matters. The Commission encourages commenters to address whether any disclosures it requires should be part of an aggregate statement of account that includes all charges and fees incurred at the facility, for example commissary or other non-telecom-related charges, or whether the Commission should require a separate

statement limited solely to inmate calling services-related disclosures. The Commission encourages commenters to offer specific language concerning any conforming rule changes in relation to any of the foregoing proposals.

48. *Disclosing Rates and Charges.* Finally, the Commission's current rules require inmate calling services providers to clearly, accurately, and conspicuously disclose their rates and ancillary service charges on their websites or in another reasonable manner readily available to consumers. Inmate calling services providers that offer interstate toll service are required to post their rates on their websites, and, to the extent they offer inmate operator services, their live agents are already required to make certain notifications to customers. The Commission seeks comment on how effective these disclosures have been at providing consumers with the information they need. To what extent do providers use websites to provide this information? Are the website disclosures easy for consumers—particularly those with less technical expertise—to navigate? Are there ways that inmate calling services provider websites could be modified for easier accessibility? If so, what steps would providers need to take to make those modifications? Do any providers use non-website disclosure methods? If so, what are those methods and how effective are they? Should the Commission mandate disclosures via website to the extent providers maintain a website *and* in some other manner to ensure that all current or potential inmate calling service consumers can access the required disclosures?

#### **Adopting Permanent Caps on Rates and Ancillary Service Charges**

49. The Commission seeks further comment on how it should use the responses to the Third Mandatory Data Collection to establish reasonable, permanent caps on rates and ancillary service charges for interstate and international calling services for incarcerated people. That data collection required each inmate calling services provider to report, among other information, detailed company-wide and facility-specific data reflecting the costs they incurred in providing, and the revenues they received from providing, inmate calling services and associated ancillary services. In the 2021, the Commission sought comment on various issues relating to the establishment of such caps, and the Commission renews its request for comment on these and additional issues to assist with deciding whether to establish rate caps and suggest additional changes to its rules.

50. *Mandatory Data Collection Responses.* The Commission begins by seeking comment on

the providers' responses to the Third Mandatory Data Collection, because the Commission expects to rely on these responses when evaluating the appropriate changes to its rules. The Commission asks whether the information in those responses meets the standard that the Commission applied in the Rates for Interstate Inmate Calling Services, Final Rule, 86 FR 40682 (July 28, 2021) (*2021 ICS Order*), where it examined the providers' responses to the Second Mandatory Data Collection for completeness, internal consistency, and credibility, among other criteria. Do any of the responses deviate from the collection instructions in a way that undermines the value and usefulness of the information provided? If so, how should the Commission correct for such deviations in its evaluation of the information? Are any of the Mandatory Data Collection responses similarly incomplete in that they omit material information? If so, which ones and how are they incomplete? One commenter suggests that certain providers' Annual Reports state that the providers charge no ancillary service fees, when they actually do charge such fees. How should the Commission respond if any provider failed to file a response? Because providers have unique access to such information, what, if any, evidentiary presumptions should the Commission apply if providers failed to file required information?

51. The Commission also seeks comment on whether the data included in the responses appear accurate and reliable, and properly reflect the providers' actual costs of providing interstate and international inmate calling services and associated ancillary services. Are there deficiencies in the provided data, such that the Commission should remove apparent invalid or otherwise anomalous data from its analyses? Should the Commission exclude information submitted by providers that is materially deficient and use the responses from the remaining providers in a manner that, if practicable, compensates for the missing data to set permanent caps for all providers? If not, why not and what should the Commission do in the alternative?

52. Are there data for particular providers or facilities that appear so atypical or implausible as to warrant adjustment or exclusion? For example, if there are any providers whose reported annual total costs exceed their reported annual total revenues, should the Commission adjust the providers' reported costs by treating their reported revenues as an upper bound on those providers' actual costs? If the Commission makes such an adjustment, should it reduce the reported costs allocated to each facility by the same proportion by which reported annual total costs exceed reported annual total revenues?



Similarly, if there are any facilities or contracts whose reported annual costs exceed their reported annual revenues, should the Commission treat the reported revenues as an upper bound on those facilities' or contracts' actual costs? If the Commission makes such an adjustment, how should it reallocate the difference among the remaining facilities or contracts? Conversely, is there any evidence that providers have reported costs at the facility level that exceed revenues during the early years of contracts, and proceed to make up the deficits during later years? If so, how should the Commission account for that? How else might the Commission adjust reported costs that exceed reported revenues?

53. Do any providers allocate costs in a manner that overstates costs for certain types of facilities and understates them for others, or otherwise misallocates costs? If so, would relying on those providers' cost allocations lead to rate caps that are unreasonably high for certain facility or contract types but unreasonably low for others? Should the Commission adjust reported costs in such instances, and if so, how?

54. *Allowable Costs.* The Commission invites comment on how it should ensure that providers' reported costs of providing inmate calling services and associated ancillary services reflect prudently incurred investments and expenses that are "used and useful" in the provision of those services. The Commission has historically treated costs as used and useful only to the extent they are necessary to the efficient conduct of a utility's business, presently or within a reasonable future period. Do the providers' reported costs meet this standard? In particular, are any provider's reported costs outside the range that a reasonably efficient provider would be expected to incur, given the types of facilities it serves? The D.C. Circuit did not foreclose an efficient provider approach, but in relevant part held only that the data on which the Commission had relied in developing the efficient provider approach that was before the court was flawed, and that the Commission had not adequately accounted for conflicting data. Precisely what adjustments, if any, should the Commission make to exclude costs that are not used and useful from its rate cap calculations?

55. Some commenters have suggested that certain types of expenditures, such as those for providers' security and surveillance services, should be excluded from providers' costs, as they are attributable to functions or services that are distinct from the provision of calling services. The Commission invites comment on this view. In particular, which of the security and surveillance costs that

providers included in their filings relate to functions that meet the used and useful standard? Worth Rises suggests that any security or surveillance functions, beyond those that the Communications Assistance for Law Enforcement Act (CALEA) imposes on communications providers generally, are neither necessary for the provision of inmate calling services nor of services to consumers or the general public.

56. *Factors Affecting Costs.* The Commission also seeks further comment on factors that affect providers' costs and how it can practicably account for those factors in its analysis. Do the data support the size and facility tiers the Commission adopted in the *2021 ICS Order*, or do they lend themselves to other alternative tiers? Should the Commission consider eliminating tiers altogether in favor of a single interstate rate cap for all facilities, regardless of size? The Commission also seeks comment on whether average daily population, as opposed to another measure, is the best variable to use if it divides jails into tiers. Commenters should explain how use of alternatives to average daily population would be administratively feasible.

57. Certain commenters suggest that relying on a facility's average daily population fails to account for the additional costs rapid turnover imposes on providers at smaller facilities. Do the data collection responses show that variations in turnover rates, or similar measures such as accounts opened and closed or admissions and releases, result in variations in provider costs that the Commission should consider? Commenters identify certain additional factors, including the greater likelihood of damage to equipment and the need to rely on contract technicians rather than full-time employees, as cost drivers for providers serving smaller facilities. Do the data collection responses sufficiently capture these factors? Do those responses indicate that other variables, such as geographic location or rurality, affect providers' costs of providing calling services and associated ancillary services? How can the Commission account for the various cost drivers in an administratively feasible way in setting permanent interstate and international rate caps?

58. *Permanent Rate Caps.* The Commission asks parties to present their own analyses of the data in providers' data collection responses and to suggest methodologies it might use to set reasonable interstate and international provider-related rate caps. The interim rate caps adopted in the *2021 ICS Order* have two components: a provider-related rate component, designed to allow providers to recover the costs they incur in providing interstate and international inmate calling services; and a facility-related

rate component designed to compensate providers for certain site commission payments they are obligated to make to facilities. The *2021 ICS Order* employed a zone of reasonableness approach in setting separate interim provider-related rate caps, a process that involved three distinct steps. The Commission first used the cost data that providers had submitted in response to the Second Mandatory Data Collection to establish the maximum upper bounds of providers' reported costs to set interstate provider-related rate caps for prisons and larger jails. Because the data the Commission used in setting the upper bounds may have overstated the providers' prudently incurred and used and useful costs of providing inmate calling services, the Commission then made reasonable, conservative adjustments to the reported data and used the adjusted data to establish the lower bounds of its zones of reasonableness. Finally, the Commission relied on its analysis of the record evidence and on the Commission's agency expertise to pick, from within those zones, reasonable interim interstate rate caps for prisons and larger jails.

59. Should the Commission similarly employ a zone of reasonableness approach in setting permanent provider-related rate caps? If so, what data should the Commission use to set the upper and lower bounds of each zone of reasonableness? In the *2021 ICS Order*, the Commission set the upper bounds of the zones of reasonableness using industry-wide mean contract costs per minute, plus one standard deviation relative to that mean. The Commission set the lower bounds relying on widely accepted statistical tools, including the *k*-nearest neighbor method, to adjust for deficiencies in the provided data. If not, what alternative should the Commission use instead? If the Commission continues to employ a zone of reasonableness approach, is it necessary or appropriate to retain the one standard deviation above and below industry-wide mean costs in setting the upper and lower bounds of each zone? Alternatively, should the Commission simply establish its upper and lower bounds based on industry-wide mean costs, and develop an alternative process to ensure an opportunity for cost recovery for high-cost providers? If so, what should that process be? Or should the Commission use another measure to set the bounds instead, such as the interquartile range statistical methodology that one commenter suggests? Should the Commission disregard providers, contracts, or facilities with costs that vary significantly from the costs of other similarly situated providers, contracts, or facilities in setting its upper and lower bounds? How should the Commission determine whether this significant variation reflects costs that are

prudently incurred and used and useful in the provision of inmate calling services? What adjustments should the Commission make to exclude reported costs that were not prudently incurred or are not used and useful from its rate cap calculations?

60. The Commission seeks comment on the appropriate permanent rate caps given providers' responses to the Third Mandatory Data Collection. If the Commission employs a zone of reasonableness approach, what factors should the Commission consider in selecting permanent rate caps from within the zone for each rate tier? In particular, how should the Commission ensure that each provider is fairly compensated for its prudently incurred costs that are used and useful in the provision of inmate calling services and ensure that consumers are charged just and reasonable interstate and international rates? Should the Commission set rate caps that would ensure that the majority of providers, contracts, and facilities are able to recover their prudently incurred, used and useful costs, while avoiding overcompensation, and use a separate process to address outliers? If so, what process should the Commission use to ensure that the outliers are not compensated for their inefficiencies? For example, should the Commission separate providers, contracts, or facilities according to factors that drive costs such as size, turnover, or other factors, and then conclude that providers, contracts, or facilities within each group should have largely similar costs? Should such an approach also account for possible differences in providers' cost allocation methodologies, as set forth in their reported costs? Would it be appropriate to establish separate rate caps for each provider, or groups of providers? Would this similarly allow for cost recovery without the need to include a buffer? Would that change in approach distort the bidding market by, for example, giving providers with higher rate caps an advantage in seeking new or renewed contracts? Would it raise other new concerns, such as a heightened risk of abuse in providers' future cost reporting?

61. The Commission also seeks comment on how the collected data should affect its resolution of other issues relating to its rate cap calculations. The Commission seeks comment on the benefits, issues, and obstacles of analyzing the collected data at the contract or company-wide level, as opposed to the facility level. Would analyzing the data at the contract level help to develop cost allocations that better reflect commercial reality? Alternatively, would a focus on contract-level costs increase the likelihood of widespread overcompensation? Could the Commission segregate contracts

according to size, inmate turnover, composition of facilities, or other factors that drive costs? If the Commission's rate caps were to allow every provider to fully recover its allowable costs at the contract or the company-wide level, would there be any concern that the costs allocated to some facilities would exceed the provider's revenues from those facilities? Or would it suffice, in those circumstances, if the provider's revenues from each facility equaled the portion of its allowable costs directly assigned or directly attributed to the facility plus an additional amount to offset a portion of the provider's other costs?

62. *Treatment of Ancillary Services.* The Commission seeks comment on how it should use the responses to the Mandatory Data Collection to reevaluate and, if appropriate, revise its ancillary services rules and fee caps. The Commission's current rules permit providers to charge fees for ancillary services in addition to the per-minute fees they charge consumers for interstate and international calls. Do the reported data provide a reasonable allocation of costs between inmate calling services and various ancillary services? If so, do those data demonstrate that the current ancillary services fee caps are commensurate with the reasonable costs of those services? If not, how can the Commission cap ancillary service charges to levels that more accurately reflect costs?

63. Some commenters suggest the Commission should remove costs related to ancillary services from its calculations of its per-minute rate caps. Should the Commission take that approach? Alternatively, are some or all of these services an inherent part of providing inmate calling services, and consequently should the Commission include those costs in its per-minute rate cap calculations and eliminate some or all charges for ancillary services? For instance, would it be reasonable for the Commission to include all costs that providers incur in processing credit and debit card payments in the Commission's per-minute rate cap calculations and preclude providers from imposing separate charges in connection with those payments? Would it make sense for providers to recover all their billing costs through per-minute charges, rather than splitting that recovery among calling services and the providers' ancillary services? Should the Commission instead analyze both sets of services together, and require that total revenues from both inmate calling services and permissible ancillary services not exceed the combined reasonable costs of both service types? Which approach would provide the best overall rate structure?

64. Under what circumstances should the Commission continue to permit separate ancillary service fees? For example, should the Commission do so where the service is only supplied at the customer's discretion? For ancillary services that commenters recommend that the Commission continues to separate fees, the Commission seeks comment on whether it should adjust the current caps. The Commission asks commenters to present their own analyses of ancillary services cost and revenue data and to suggest methodologies it might use to adjust the ancillary services fee caps. Should the Commission develop separate zones of reasonableness for each type of permissible ancillary service? If so, how should the Commission calculate the upper and lower bounds of each service, and what factors should the Commission consider in picking a new cap from within the zone? If not, why not and what alternative approach should the Commission use?

65. The Commission seeks further comment on whether the reported data reveal a need for additional revisions to its ancillary service charges rules. In 2021, the Commission highlighted record evidence concerning the assessment of duplicate transaction costs on the same payments, and it sought comment on whether the credit card processing fees encompassed in the automated payment fee are the same credit card processing fees referred to in the third-party financial transaction fee. The Commission sought comment on whether providers engaged in such "double dipping," as alleged in the record, and whether the Commission's rules clearly prohibit assessing multiple ancillary service charges per transaction or should be amended to implement such a prohibition. In response, PPI urges the Commission to prohibit inmate calling services providers from charging both automated fee payments and third-party transaction fees arising from the same transaction because, carriers are recouping payment-card processing costs twice over. PPI contends that when carriers impose the \$3 fee allowed under 47 CFR 64.6020(b)(1) while also making customers pay the carrier's card processing costs under 47 CFR 64.6020(b)(5), this constitutes an unreasonable charge, unjust enrichment, and circumvention of the Commission's stated purpose in promulgating ICS rules. Similarly, NCIC asks the Commission to prohibit third-party transaction fees which lead to double billing of inmate calling services customers. Several parties also argue that including credit card processing fees as part of the third-party pass-through allowance was a mistake and has led to abuse. Securus agrees that such double recovery, if it is occurring, would be inappropriate and the Commission should clarify that a credit card processing fee

may only be imposed once for the same transaction or payment. On the other hand, Securus claims that it may impose an automated payment fee that recovers the internal costs in managing accounts and may also impose a third-party credit card processing fee to cover the costs imposed on Securus by a third-party credit card payment processing company if a credit card is used to fund a prepaid account. Securus agrees that a straightforward requirement barring duplication of the same charges for the same transaction or payment would be appropriate, but contends that it should be entitled to recover that third-party cost. Securus and GTL also argue that the Commission should not assume that the assessment of more than one transaction fee for a single transaction means that double recovery is taking place. Similarly, GTL asserts that the Commission consistently has maintained a distinction between Automated Payment Fees assessed by an inmate calling services provider on a qualifying transaction and the attendant Third-Party Financial Transaction Fees a provider may pass through to the consumer to facilitate the completion of that transaction.

66. The Commission invites comment on these issues related to transactions that involve credit card processing, including whether the data show that providers assess multiple ancillary services charges for a single transaction. Do the data from the Third Mandatory Data Collection demonstrate that providers are recovering payment card processing costs twice? If so, which data show this double recovery? Do commenters agree with NCIC and PPI that the inclusion of credit card processing in connection with third-party financial transaction fees was a mistake? Why or why not? Should the Commission clarify that payment card processing fees may not be imposed multiple times for a single transaction or payment, but still allow providers to charge both an automated payment fee as well as a third-party financial transaction fee for a single transaction, in order to recover costs imposed by a third-party credit card payment processing company, as Securus suggests? Or should the Commission disallow the inclusion of payment card processing costs in connection with third-party financial transaction fees?

67. Do the data show evidence of other forms of potentially duplicative charges with respect to ancillary service charges? The Commission likewise seeks comment on whether there are scenarios in which the imposition of more than one ancillary service charge may be appropriate. If so, which data? NCIC offers documentation that certain inmate calling services providers may be imposing additional ancillary fees on inmate calling services consumers in contravention of the Commission's rules. NCIC

alleges that the imposition of additional transactional fees has grown to be a significant revenue generator for certain inmate calling services providers and provides evidence that certain providers may be tacking on additional fees for online deposits. For example, in one instance, a provider appears to have charged a \$3.00 transaction fee and a 6% credit card processing fee (among other fees) on a \$10 deposit. The Commission invites comment on these purported practices, and whether these fees recover valid costs or are leading to double recovery for providers.

68. The Commission seeks comment on further reforms it should make to fees for single-call services and third-party financial transaction fees to ensure that charges are just and reasonable. As an initial matter, in the Order, the Commission lowers the caps on fees for single-call services and third-party financial transaction fees to \$3.00 for automated payment transactions and \$5.95 for live agent transactions. PPI suggests that the Commission should impose even lower caps after the conclusion of the data collection. Do the data from the Third Mandatory Data Collection support lowering these caps, as PPI suggests? If so, to what levels? Securus on the other hand asserts that the automated payment fee recovers the internal costs in managing accounts. What are the costs associated with managing accounts? Should those costs be recoverable through the automated payment fee? Or should those costs be factored into the per-minute inmate calling services rates? Commenters should be as specific as possible identifying circumstances under which any such costs should be factored into the per-minute inmate calling services rates.

69. Some commenters argue that live agents may not be available in single-call services. Do other commenters agree with this assessment? One commenter suggests that the fee for single-call services should be no more than \$0.25 to cover credit card transaction fees. The Commission seeks comment on this cap. Should the Commission consider prohibiting inmate calling services providers from imposing anticipated taxes on consumers at the time of a deposit? NCIC suggests that without knowing each call's end point, the provider cannot determine the actual tax obligation arising from a call, resulting in overcollection by the provider. How should the Commission ensure that consumers are not overcharged by providers for anticipated federal, state, or local taxes?

70. PPI asserts that single-call services are losing popularity and are becoming uncommon in the industry, given that, by definition, they require third-party billing. PPI contends that carriers still



commonly allow or encourage customers to pay for calls on a one-off basis, but billing is typically done directly by the carrier without the involvement of a third party. Do commenters agree? How prevalent are single-call services? For those who are newly incarcerated, are single calls the only way to make initial contact with loved ones outside of the correctional facility? If not, what other options are available? How do providers bill for single-call services? If a provider uses a third party to bill for single-call services, and also assesses an automated payment fee on consumers who elect to pay by credit card, should the Commission allow providers to assess both a third-party payment fee and an automated payment fee for the same transaction? Relatedly, the Commission is concerned that consumers without a credit or debit card may be unable to pay for single calls from an incarcerated individual because payment using a credit or debit card appears to be the only option for consumers to pay for such calls at the time the call is made. NCIC conducted test calls and discovered that a consumer without an account or enough funds to pay for a call could either pay using a payment card or decline the call. Do commenters agree that consumers must use a payment card to pay for single calls? If not, how can consumers pay for single calls if they do not have a credit or debit card? How can the Commission ensure that incarcerated people are able to successfully initiate communication using single-call products? Should the Commission prohibit any transaction fees on single calls?

71. Finally, the Commission seeks comment on how its ancillary service charges caps should be adjusted to better reflect the actual cost of providing particular ancillary services, in light of the data from the Third Mandatory Data Collection. In 2021, the Commission sought comment on proposals to reduce its ancillary service charge caps and whether it should adjust the caps based on the data from the Third Mandatory Data Collection. In response, PPI supports lowering the caps on third-party financial transaction fees, fees for single-call services, automated payment fees, and live-agent fees, following completion of the Third Mandatory Data Collection. Do the data from the Third Mandatory Data Collection support reductions of these fees? If so, to what levels? Commenters should provide their own analyses of the reported data in support of any proposed caps. NCIC argues that certain ancillary costs have increased. NCIC points to the fact that credit card processing fees have not decreased in the past six years, but certain compliance requirements such as Payment Card Industry Certification requires more rigorous network intrusion testing than what was required six years ago when the ancillary caps were first

adopted. NCIC also posits that labor costs have increased by at least 20% in the past 6 years. Do commenters agree with these assertions? Do the data from the Third Mandatory Data Collection support a conclusion that ancillary services costs have increased? If so, how? To account for increasing costs, NCIC suggests that there should be a process for the Commission's ancillary fee caps to be adjusted to account for inflation and labor costs. Do commenters support this proposal? If so, what mechanism could the Commission adopt to implement such a proposal and how could that mechanism be incorporated into its rules?

### **Potential Pilot Programs Offering Alternative Pricing Structures**

72. The Commission seeks further comment on whether to allow inmate calling services providers to offer optional pilot programs that offer consumers the ability to purchase inmate calling services under alternative pricing structures, in addition to the traditional per-minute pricing model required by its rules. The Commission invites comment on whether, as several parties suggest, pilot programs offering alternative pricing structures, generally, would benefit incarcerated people and their families by lowering calling costs and increasing connectivity. The Commission also invites commenters to elaborate on the specific elements and attributes it should require of any pilot it might allow, and how it can ensure that providers structure such pilot offerings in a manner that does not harm consumers. In particular, the Commission seeks comment on how to ensure that any such pilot programs would not undermine its caps on interstate and international rates and ancillary services charges. In addition, the Commission seeks comment on whether it should permit any such pilot programs only subject to certain specified conditions.

73. *Background.* The Commission's rules prohibit inmate calling service providers from charging for calls on a per-call or per-connection basis and require the providers to price their interstate, international, and jurisdictionally indeterminate calling services at or below specific per-minute rate caps. For convenience, the Commission refers to 47 CFR 64.6030, 64.6080, 64.6090 as the pricing structure rules. Separately, the Commission's rules allow inmate calling service providers to charge consumers for any of five specified types of ancillary services charges, each subject to their own respective caps. This structure results in incarcerated persons and their families paying for their interstate and international phone calls on a per-minute basis. Outside of correctional facilities, however, most phone users no longer

pay per-minute rates for the phone calls they place.

74. In document FCC 22-76, the Commission sought comment on alternative pricing structures that depart from traditional per-minute pricing. Among other questions, the Commission asked whether it should allow providers to offer different optional pricing structures subject to the Commission's prescribed rate caps and whether the Commission should adopt a process for waiving the per-minute rate requirement to allow for the development of alternative pricing structures. Shortly after the release of the *2021 ICS Order*, Securus filed a petition asking the Commission to waive its pricing structure rules to allow Securus and other providers to offer alternative rate options. According to the Petition, Securus had offered pilot programs at certain facilities that gave consumers the option to purchase intrastate inmate calling services pursuant to subscription pricing plans. The correctional institution determined the maximum amount of time available for each call, and the maximum call duration typically varied between 15 and 30 minutes. For a flat fee, consumers who elected to participate could buy packages of 25 telephone calls per week or 100 calls per month. This flat rate consists of a base rate plus a charge for the recovery of site commissions if applicable. Securus also charged a \$3.00 automated payment fee upon enrolling in or renewing a subscription plan. Securus explains that the effective price of these packages ranged from \$0.02 to \$0.07 per minute for consumers who used every available minute, lower than the rate caps applicable to interstate calls made from the same facilities. If consumers used less than half of their available calling minutes, Securus asserts that the effective per-minute price increased to a range of \$0.03 to \$0.13 per minute. Securus notes, however, that because many of the calls made using the subscription plans were to wireless phones whose exact physical location was difficult to determine, it had to treat potentially in-state but jurisdictionally indeterminate calls as interstate calls whose rates are limited to per-minute charges, jeopardizing the development and availability of flat-rate subscription plans for multiple calls. WCB sought comment on Securus's Petition. Although the Commission does not resolve Securus's Petition in document FCC 22-76, it does seek further comment on the benefits of the subscription calling pilot program as described therein, and on other pilot programs that providers may offer under the Commission's rules.

75. Although several commenters recognized the potential benefits of pilot programs, such as the ones Securus has offered, other commenters sought more information about the company's pilot

programs and expressed concerns that incarcerated people and their families may not have received enough information to make informed decisions about whether the programs would meet their needs. Specifically, commenters ask that Securus be required to provide consumers with more complete disclosures regarding prices, fees, call metrics, and the terms and conditions relating to renewal and cancellation of its alternative calling plans. Commenters also urge the Commission to require any pilot program to adhere to certain pricing, disclosure, and other conditions to protect incarcerated persons and their families from abuse.

76. *Potential Pilot Programs.* The Commission seeks comment on whether it should amend its rules to permit providers—subject to certain conditions—to offer pilot programs for inmate calling services that use pricing structures other than per-minute rates. The Commission seeks comment on the types of alternative programs that would be most beneficial to incarcerated people and on the reasons why such programs would be superior to the current per-minute pricing structure. Would a flat-rate package, such as a single price for an allotment of minutes, offer the most benefits? The Commission encourages commenters to fully explain how any pricing model would operate, how it would benefit consumers, and how the Commission can ensure that it would not harm consumers. The Commission encourages commenters to describe potential pilot programs in detail, including both the pricing and other operational features of any program.

77. What would be the costs and benefits of various types of alternative pricing structures? Would certain alternative pricing structures offer incarcerated people and their families more predictable, reliable, or affordable calling rates than others? If so, which rate structures would be most advantageous to consumers and why? Which types of offerings would give providers greater certainty regarding their inmate calling services revenues or offer other benefits tied to predictability? What type of consumer outreach or education would be needed to ensure that consumers are able to choose the pricing structure that best meets their needs?

78. *Potential Conditions.* The Commission seeks comment on whether and how it could ensure that all pilot programs offer rates that, on a per-minute basis, are less than its current per-minute rate caps. What measures, if any, would be needed to protect consumers against unreasonably high interstate and international rates in connection with pilot programs? How should the Commission

determine whether the rate offered under any proposed alternative pricing structure is, on a per-minute basis, less than its rate caps? Should the Commission take the total price of the pilot program offering and divide it by the total amount of minutes available under that program? How else might the Commission determine whether a specific alternative pricing structure results in higher effective rates for consumers than what they would pay under the applicable per-minute caps? Should the Commission provide for true-up procedures, under which providers would be required to refund any revenues exceeding those permitted under its rules? The Commission encourages commenters to be specific and to demonstrate how any given structure would be consistent with its caps. Should the Commission assume that each consumer will use every call and minute available under an alternative pricing program? Or should the Commission require that the consumer's actual usage be taken into account? If the Commission takes the latter approach, how should the Commission assess whether a pilot program's pricing is consistent with its caps? Should the Commission require that any alternative plan offer consumers a discount compared to what they would pay for the same usage under its existing per-minute rate caps? If so, what should the minimum discount be? Finally, how should the Commission treat plans that offer an unlimited number of minutes or have indefinite terms?

79. The Commission seeks further comment on whether all pilot programs should be optional, so that incarcerated people and their families always are able to choose to purchase interstate and international calling services at per-minute prices that do not exceed its rate caps. If so, how should the Commission implement this condition for different types of pilot programs? The Commission also seeks comment on whether there are specific policies it should adopt to protect consumers and on whether there are specific features or attributes that different pilot programs should include. Should the Commission require providers to offer a set minimum number of calls or minutes per month, or other time period? Should the Commission require providers to allow consumers to roll over any unused minutes into each successive subscription period? Are there other specific parameters the Commission should require? Should providers be required to provide credits or otherwise make consumers whole for any calls that are not completed or that are dropped? If a pilot program offers calling services on a periodic subscription basis, should consumers be able to opt out of automatic renewals of their subscriptions? Should providers be required to provide more than one opt-out method? Should

consumers be permitted to cancel a subscription before the end of the subscription period? If so, should providers be required to offer refunds? If providers are required to offer refunds, how should they provide such refunds in the event of cancellation prior to the end of a subscription term?

80. *Disclosures and Consumer Awareness.* The Commission invites comment on what rules, if any, it should adopt to ensure that providers clearly, accurately, and conspicuously disclose the details of any alternative pricing plans, while at the same time clearly conveying to consumers the continued availability of per-minute calling plans. Since providers may implement different types of alternative pricing structures, it is critical that incarcerated people and their families understand their provider's alternative offerings and how they differ from per-minute usage. The Commission seeks comment on what information consumers would need about providers' pilot programs to help them make informed choices between a pilot program and traditional per-minute pricing. Should the Commission require providers to inform consumers how a pilot program's prices translate on a per-minute basis, to enable consumers to make an informed decision between the program and the traditional per-minute pricing model? If not based on an equivalent per-minute price, how should any price comparison be made? More generally, how should providers present the prices under alternative plans, and what specific elements should be itemized? What sort of terms and conditions would help consumers understand what a given plan entails? Various terms and conditions could include, but are not limited to: pilot program costs, ancillary service charges, automatic renewal terms, cancellation policies, and refund policies. Should the Commission adopt additional rules governing how providers should disclose to consumers the rates, terms, and conditions associated with any pilot program? If so, what specific information should providers be required to disclose? Should the Commission require a written or electronic disclosure, or otherwise specify the manner in which providers must make any required disclosures?

81. The Commission seeks comment on these potential conditions, and on any other conditions that might be necessary in order to preserve the protections for incarcerated people under its rules. Should the Commission require providers to inform it of their intent to offer a pilot program and the details of that program, or require other notification steps? Are there any other constraints or requirements the Commission should adopt? Conversely, are there other rules the Commission might need to waive in order for pilot programs using alternative pricing structures to be commercially viable?

82. *Pilot Period.* The Commission seeks comment on whether it should authorize pilot programs for a limited period, for example two years. Would such a time period provide sufficient time to allow incarcerated people and their families to adjust to the offerings and for the Commission to more fully evaluate the costs and benefits of any individual program? Would two years allow the market to adjust to any new offerings? Should the Commission adopt a longer or shorter period? Why or why not? Are there relevant performance metrics, such as rate of adoption or usage, that will be most affected by the duration it chooses? When should any period commence?

83. *Program Continuance.* The Commission invites comment on what factors it should consider in deciding whether to extend a pilot program beyond the initial permitted period to make that program permanent. What information should the Commission focus on in evaluating the efficacy of such programs? What, if any, information should the Commission require providers to submit regarding their pilot programs so that the Commission can make an informed judgement on extending the pilot programs or amending its rules to allow them to continue permanently?

84. *Burden of Demonstrating Compliance with Existing Rate Caps.* Finally, the Commission seeks comment on whether to require providers to bear the burden of demonstrating that any pilot programs comply with its inmate calling service rate and ancillary services fee caps. If the Commission does adopt such a requirement, what should the consequences be if the provider fails to meet that burden? Should the consumer then be entitled to a refund of the charges over and above those that would have been assessed on a per-minute basis? What would the appropriate period be for determining whether a pilot program has complied with the Commission's rate caps, and how can this burden be met for calling plans that are not dependent upon a given period (such as a fixed fee for a number of calls)? For example, should the Commission evaluate compliance with its rate and ancillary fee caps on a three-month basis to account for normal variations in calling patterns that on average would end up complying with the Commission's rate caps if calls had been billed on a per-minute basis over the three-month period? Should the Commission adopt a shorter or longer period and, if so, why? What other factors should the Commission consider regarding the burden of proof?

#### **Definitions of “Jail” and “Prison”**

85. The Commission seeks comment on whether it should expand its definitions of “Jail” and

“Prison” to ensure that they capture the full universe of confinement facilities with residents who access interstate or international communications services. Specifically, the Commission invites comment on whether it should include in those definitions civil commitment facilities, residential facilities, group facilities, and nursing facilities in which people with disabilities, substance abuse problems, or other conditions are routinely detained. The Commission asks that commenters address in detail whether residents of such facilities are able to access voice and other communications services through providers of their own choice, as opposed to being limited to the providers selected by third parties. The Commission seeks comment on its authority to apply its inmate calling services rules, including those addressing communication disabilities, to these facilities. Does that authority, if any, vary depending on whether a facility is a non-governmental, as opposed to governmental, facility? The Commission also seeks comment on the costs and benefits of applying its rules to these facilities and on any practical problems that such application might create. The Commission asks, in addition, whether it should tailor any of its non-definitional rules to address the specific circumstances of these facilities and, if so, how it can best ensure that their residents have access to interstate and international voice and other communications services at rates, and on terms and conditions, that are just and reasonable.

### **Digital Equity and Inclusion**

86. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed in document 22-76. Section 1 of the Act provides that the FCC regulates interstate and foreign commerce in communication by wire and radio so as to make such service available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex. The term “equity” is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual,



transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. Specifically, the Commission seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

### **Initial Regulatory Flexibility Analysis**

87. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in document FCC 22-76. The Commission requests written public comments on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in the Dates section of document 22-76. The Commission will send a copy of the document, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

### **Need for, and Objectives of, the Proposed Rules**

88. In document FCC 22-76 the Commission seeks additional comment on whether to allow a simplified form of registration for using IP CTS in correctional facilities, similar to enterprise phone registration currently allowed for VRS. The Commission seeks comment on whether it should require inmate calling services providers to provide access to additional forms of TRS in jurisdictions with average daily populations of fewer than 50 incarcerated people. The Commission also proposes and seeks comment on requiring that charges for inmate calling services be disclosed in accessible formats.

89. The Commission also seeks additional evidence and comment from stakeholders to enable further reforms concerning providers' rates, charges, and practices. First, the Commission seeks comment on refining the rules adopted in document 22-76 concerning the treatment of balances in inactive accounts. Second, the Commission seeks comment on expanding the breadth and scope of existing consumer disclosure requirements. Third, the Commission addresses certain issues that arose from the providers' 2022 data collection responses. Specifically, the Commission seeks comment on how data collected by the Commission should be used to establish just and reasonable permanent caps on interstate and international rates and associated ancillary service charges consistent with the statute. The Commission seeks comment on whether to allow inmate calling services providers to offer pilot programs allowing consumers to purchase calling services under alternative pricing structures. Finally, the

Commission seeks comment on revisions to its definitions of “Prison” and “Jail,” and on how the proposals in document 22-76 may promote or inhibit digital equity and inclusion.

### **Legal Basis**

90. The legal basis for any action that may be taken pursuant to document 22-76 is contained in sections 1, 2, 4(i)-(j), 201(b), 218, 220, 225, 255, 276, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)-(j), 201(b), 218, 220, 225, 255, 276, and 403.

91. The types of entities affected are: wired telecommunications carriers; local exchange carriers; incumbent local exchange carriers; competitive local exchange carriers; interexchange carriers; local resellers; toll resellers; other toll carriers; payphone service providers; TRS providers; and other telecommunications.

### **Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

92. *Compliance with Requirements to Provide Access and Expanded Registration Requirements.* The Commission seeks comment on whether to allow enterprise registration for IP CTS use, limited to the correctional context. If adopted, IP CTS providers would have an alternative registration method for incarcerated people with communication disabilities to access TRS. The Commission also seeks further comment on whether to modify the scope of inmate calling services providers’ TRS obligations as determined in document 22-76. In particular, the Commission seeks comment on requiring those providers to provide access to additional forms of TRS (VRS, IP Relay, IP CTS, and CTS) when they serve facilities in a jurisdiction with average daily populations of fewer than 50 inmates. If adopted, inmate calling services providers that do not all already provide these additional forms of TRS to smaller facilities may have additional data to report as a part of the Commission’s Annual Reporting and Certification Requirement to comply with requirements adopted in the Report and Order portion of document FCC 22-76. The Commission also proposes to require that charges for inmate calling services be disclosed in accessible formats. If adopted, inmate calling services providers that do not all already provide such information in accessible formats would need to do so.

93. *Other Potential Requirements.* The Commission seeks comment on refining the rules adopted in document 22-76 concerning the treatment of unused funds in accounts consumers use to pay for interstate and international inmate calling services and related ancillary services charges, as well as on

amendments to those rules which aim at protecting inmate calling services account holders against unreasonable practices in related to those funds. The Commission also seeks comment on the appropriate permanent interstate and international rate and ancillary services fee caps given providers' responses to the Third Mandatory Data Collection, as well as on other amendments to its ancillary services rules.

94. The Commission seeks comment on how amending its current consumer disclosure rules could improve and expand the current rules and reach more inmate calling services consumers. The potential changes include mandating that all inmate calling services providers to make the same required disclosures of information available to all consumers, regardless of whether they receive an actual bill from a provider. The Commission invites comment on whether to allow inmate calling services providers to supplement traditional per-minute pricing and develop optional pilot programs that offer consumers the ability to purchase inmate calling services under alternative pricing structures. The Commission invites comment on whether it should authorize such programs subject to certain specified conditions, including conditions protecting against unreasonably high charges for interstate and international calling services. The Commission seeks comment on whether it should expand its definitions of "Jail" and "Prison" to ensure that they capture any confinement facilities with residents who may access interstate and international communications services, and on how its proposals may promote or inhibit digital equity and inclusion.

#### **Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered**

95. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities. The Commission will consider all of these factors when it receives substantive comment from the public and potentially affected small entities. In particular, the Commission will consider the economic impact on small entities, as identified in comments filed in response to Document FCC 22-76 and the IRFA, in reaching its final conclusions and promulgating rules in this proceeding.

96. The Commission seeks comment on allowing enterprise registration for IP CTS so that incarcerated people with communication disabilities can access TRS. If adopted, this alternative form of registration could reduce the burden on IP CTS providers by allowing providers to register the relay service at a facility that maintains a list of users. The Commission also seeks further comment on requiring inmate calling services providers to provide access to all forms of TRS in a jurisdiction with an average daily population of fewer than 50 incarcerated people. The request for comment includes asking for cost data to assist the Commission with its analysis of the issue. The cost data will help the Commission ensure it is achieving its statutory obligation of ensuring TRS are available to extent possible, while appropriately considering the burden on affected entities.

97. The comments that stakeholders submit in response to the Commission's requests for comment on refining its rules on the treatment of funds in inactive inmate calling services accounts, the appropriate permanent interstate and international rate and ancillary services fee caps, and other potential amendments to its ancillary services rules, will supplement comments previously filed in this proceeding. Collectively, these comments will help the Commission meet its statutory obligation to ensure that providers' rates, terms, and practices for interstate and international inmate calling services are reasonable. Small entities can provide input in these areas addressing whether, among other considerations, the Commission should adjust its rules to address any particular financial or implementation challenges faced by small entities.

98. Similarly, the Commission's requests for comment regarding possible amendments to its consumer disclosure rules, regarding potential pilot programs for inmate calling services that use pricing structures other than per-minute rates, regarding possible amendments to its definitions of "Jail" and "Prison," and regarding digital equity and inclusion will provide an opportunity for small entities, as well as other stakeholders, to voice any concerns they may have. The Commission will consider any comments small entities file regarding these matters as part of its efforts to ensure that consumers of calling services for incarcerated people have the information they need to make informed purchasing decisions. In particular, it will consider whether any concerns small entities raise regarding possible changes to the consumer disclosure rules and the potential pilot programs as part of its overall evaluation of these areas.

99. The Commission will consider the economic impact on small entities, as identified in comments filed in response to document FCC 22-76 and the IRFA, in reaching its final conclusions and promulgating rules in this proceeding.

**Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

100. None.

101. *Initial Paperwork Reduction Act of 1995 Analysis.* The Sixth Notice of Proposed Rulemaking may contain modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). If the Commission adopts any modified information collection requirements, the Commission will publish another document in the *Federal Register* inviting the public to comment on the requirements, as required by the Paperwork Reduction Act. Pub. L. 104–13; 44 U.S.C. 3501–3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Federal Communications Commission.  
Marlene Dortch,

*Secretary,*  
*Office of the Secretary.*

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